IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Ins.APP.No. 67 of 2005()

IC.77/2002 of EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANTS:OPPOSITE PARTIES:
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1. **THE REGIONAL DIRECTOR, ESI CORPORATION, PANCHADEEP BHAVAN,N.S.ROUND, TRICHUR.**

2. **THE RECOVERY OFFICER, ESI CORPORATION, PANCHADEEP BHAVAN, TRICHUR.**

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT:APPLICANT:

S.JEEVAN, SOLE PROPRIETOR,M/S.SAMUDRA ENGINEERING COMPANY, SAMUDRA HOUSE,EDAKOCHI.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR,J

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Ins.Appl.No.67 of 2005

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Dated this the 16th day of November, 2007

JUDGMENT

The Regional Director, ESI corporation, Thrissur has filed this appeal challenging the order passed by the EI Court, Alappuzha, in I.C,No.77/2002 by which it was held that liability of the respondent to pay interest will arise not from 1.1.1996 but only from 28.3.2001. The short facts are as follows: The appellant made demand a contribution of Rs.50,886/- from 1.1.1996 to 3.9.1997. The respondent contended that he was liable to pay E.S.I contribution for an amount of Rs.22,003/- only. The Insurance Court by judgment dated 27.4.2000 set aside the order passed by the appellant and ordered a reassessment. The reassessment was made on 7.2.2001. After reassessment the appellant claimed interest from 1.1.1996. Challenging that order the respondent filed I.C.No.77/2002 contending that his liability arises only fro the date on which the reassessment was made . In **Employees State Insurance Corporation v. M/s.Hotel Methanath(Kedaram) (2007(2) KLJ 708)** it was

held that liability to pay interest arise from the date on which it was due. It was held as follows:

> "Merely because the employer had failed to pay contribution under a bonafide impression or belief that the establishment was not covered under the provisions of the ESI Act cannot absolve the employer from the liability of paying interest on the delayed payment of ESI contribution under Section 39(5) read with Regulation 31A. Under such circumstances we are of the view that the Corporation is entitled to claim interest from the date on which it fell due and the date of judgment of this Court has no relevance in claiming interest."

2. In view of the principle laid down by the Division Bench the view taken by the Insurance Court is unsustainable and liable to be set aside. I hold that respondent is liable to pay interest from 1.1.1996 onwards. The learned counsel appearing for the respondent submits that the respondent filed an application and deposited an amount of Rs.15,000/- in terms of the order passed in I.C.25/1998 and the corporation withdrew that amount with interest. When the respondent deposited Rs.15,000/- its liability to pay interest to that extend came to an end. So the appellant can claim interest for the entire amount from 1.1.1996 till the date of deposit of Rs.15,000/-. The

appellant can claim balance amount only for the remaining part of the period. The appellant can withdraw the amount with whatever interest accrued.

In the result the appeal is allowed in the above terms.

K.PADMANABHAN NAIR, JUDGE

dvs